FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1442 OF 2004

WITH

CIVIL APPLICATION NO.4468 OF 2004

Office notes, office Memoranda of Coram, appearances, Court's orders or directions & Registrar's orders.	:	Court's or Judge's Orders

Mr. A.Y. Sakhare, senior counsel with Mr. O.P. Singh for the appellant.

Mr. J. Xavier for B.M.C.

CORAM: SMT. RANJANA DESAI, J.

DATED: 11TH JANUARY, 2005.

P.C.:-

Admit. By consent of the parties, taken up for hearing.

In this First Appeal, judgment and decree dated 22/11/2004 passed by the Bombay City Civil Court in L.C. Suit No.833 of 2002 is challenged by the appellant (original plaintiff). By the impugned order, the suit filed by the appellant was dismissed. It appears that the respondent- Bombay Municipal Corporation (for short, "the Corporation") had not filed its

written statement in the said suit and, hence, the matter proceeded ex-parte.

I have heard Mr. Sakhare, the learned counsel appearing for the appellant and Mr. Xavier, the learned counsel appearing for the Corporation.

In my opinion, since the judgment is passed ex-parte, it would be appropriate and in the interest of justice if the Corporation files its written statement and, thereafter, the trial court decides the suit in accordance with law. The learned counsel for the Corporation states that the Written Statement will be filed by the Corporation within six weeks from today. In view of this, I pass the following order:

ORDER

"The impugned judgment and decree dated 22/11/2004 is set aside. The respondent- Corporation shall file the written statement within a period of six weeks

from today. Upon the Corporation filing its written statement, the trial court shall decide the suit afresh in accordance with law.

Mr. Sakhare, the learned counsel for the appellant, on instructions from the appellant who is present in the court, states that the suit structure is in existence. If that is so, the Corporation shall not take any action of demolition of the suit premises till the suit is finally decided. The Appeal is disposed of in the aforestated terms.

In view of this, Civil Application No.4468 of 2004 is also disposed of."

(SMT. RANJANA DESAI, J.)